

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:08CR268 |
| |) | |
| v. |) | |
| |) | |
| JUAN OROZCO-OSBALDO, |) | MEMORANDUM OPINION |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court on defendant's motion to vacate, set aside, or correct sentence by a person in federal custody (Filing No. [113](#)) filed pursuant to 28 U.S.C. § 2255. While the document which he filed was completed on a form for filing in the United States District Court for the Southern District of California, it is clear from the filing stamps that it was sent directly to the clerk of the United States District Court for the District of Nebraska.

Defendant sets forth four grounds:

1) That his conviction was unconstitutionally obtained where, based on factual circumstances surrounding the prosecution's case against him; defendant's guilty plea was not knowingly nor voluntarily given as it was not the result of a reasonably informed and conscious choice.

2) That defendant's conviction is the result of the government's unlawful exploitation of a deprivation of

defendant's Fifth and Sixth Amendment rights to due process and effective counsel.

3) Whether defendant's sentence was illegally imposed where defendant's counsel was ineffective for his failure to timely and reasonably note, object and file written objections to the PSR's erroneous calculation that the defendant was accountable for 1.5 kilograms or more of actual methamphetamine, for a base offense level of 38, and the district court lacked jurisdiction to impose defendant's sentence for reduced term for an offense level of 35.

4) His "request for appointed counsel financially unable to pay the court denial a new attorney whether: based upon newly discovered evidence the defendant's conviction was unconstitutionally obtained where it been resently (sic) discovered on Agust (sic) 18, 2010, [t]he Ninth Circuit filed a published opinion in *United States V RIVERA-CORONA*, F.3d (2010) wl 3239458."

The Court has reviewed the defendant's motion, which is very difficult to read, a transcript of the Rule 11 hearing held on April 22, 2009 (Filing No. [87](#)), the transcript of the sentencing proceedings held on July 13, 2009 (Filing No. [88](#)), as well as the petition of the defendant to enter a plea of guilty filed on April 22, 2009 (Filing No. [52](#)), and finds that no response from the government is necessary.

The Court has also reviewed the opinion of the United States Court of Appeals for the Eighth Circuit (Filing No. [103](#)), which affirmed the judgment of the district court.

It is clear from a review of the transcript of the plea hearing and of the sentencing hearing (Filing Nos. 87 and 88) as well as a review of the petition to enter a plea of guilty which the defendant executed under oath (Filing No. [52](#)) that there is no merit to any of defendant's claims. For these reasons, the Court finds the motion pursuant to 28 U.S.C. § 2255 should be denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 31st day of August, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court